

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DAVID SAMUEL ROSENTHAL,	:	APPEAL NOS. C-160313
		C-160435
Plaintiff-Appellee,	:	TRIAL NO. DR1500335
vs.	:	<i>JUDGMENT ENTRY.</i>
MELISSA MILETO ROSENTHAL,	:	
Defendants-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Melissa Mileto Rosenthal appeals from the divorce decree ending her marriage to plaintiff-appellee David Samuel Rosenthal and dividing the parties' property. We find no merit in her two assignments of error, and we affirm the trial court's judgment.

In her first assignment of error, Melissa contends that the trial court abused its discretion by dismissing her objections to the magistrate's decision and by incorporating the findings of the magistrate into the divorce decree. She argues that the property division was inequitable. In her second assignment of error, Melissa again contends that the trial court abused its discretion by dismissing her objections to the magistrate's decision and by incorporating the magistrate's findings into the divorce decree. She argues that the trial court erred when it declined to rule on her

objections because of a lack of the transcript. She also argues that the trial court erred in failing to use alternatives to the transcript that were authorized by the court's local rules. Because these assignments of error are related, we address them together. They are not well taken.

The record shows that Melissa did not file a transcript of the hearing before the magistrate with her objections. When a party filing objections fails to provide a transcript of the hearing before the magistrate, the trial court may accept the magistrate's findings of fact. *In re Adoption of S.J.M.H.*, 1st Dist. Hamilton No. C-130683, 2014-Ohio-3565, ¶ 33; *Cwik v. Cwik*, 1st Dist. Hamilton No. C-090843, 2011-Ohio-463, ¶ 51. Consequently, appellate review of the court's decision is limited to determining if the trial court abused its discretion in applying the law to the facts. *S.J.M.H.* at ¶ 33.

The record shows that the trial court applied the facts as found by the magistrate and independently ruled on the objections. *See Chan v. Tasr*, 1st Dist. Hamilton No. C-070275, 2008-Ohio-1439, ¶ 8-9. While the trial court improperly stated that it had "dismissed" the objections, the record shows that the court found that they were "not well taken," effectively overruling them, and adopted the magistrate's decision.

Further, Melissa had the burden to provide the transcript. *See Civ.R. 53(D)(3)(b)(iii)*; *S.J.M.H.* at ¶ 31-32. The trial court was not required to provide a transcript at public expense or to review audio tapes of the hearing. *See Stewart v. Hickory Hills Apts.*, 9th Dist. Medina No. 14CA0038-M, 2015-Ohio-5046, ¶ 8; *Polon v. Prines*, 69 Ohio App.3d 631, 636-637, 591 N.E.2d 731 (11th Dist.1990).

Under the circumstances, we cannot hold that the trial court's decision to overrule Melissa's objections and to adopt the magistrate's decision was so arbitrary,

unreasonable or unconscionable as to connote an abuse of discretion. See *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 218, 450 N.E.2d 1140 (1983); *Lanzillotta v. Lanzillotta*, 1st Dist. Hamilton Nos. C-120796 and C-120835, 2013-Ohio-4050, ¶ 3. Consequently, we overrule Melissa's two assignments of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., CUNNINGHAM and DEWINE, JJ.

To the clerk:

Enter upon the journal of the court on November 23, 2016
per order of the court _____.
Presiding Judge